

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

| | | |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | 2:13-cr-00016-MPB-CMM-4 |
| |) | |
| KELLEY KELLY, |) | |
| Defendant |) | |

REPORT AND RECOMMENDATION

On October 10, 2024, the Court held an initial and final hearing on the Petition for Warrant/Violation for Offender Under Supervision filed on June 14, 2024 [Dkt. 780]. Kelley Kelly (“Defendant”) appeared with FCD counsel, William Dazey. The Government appeared by Matthew Barloh, Assistant United States Attorney. U. S. Probation appeared by Officer Jennifer Considine.

Officer Considine advised the Court on the record of a correction to dates of previously incurred violations noted in the Petition as occurring in Greene and Clay counties should be 2023 instead of 2024. The parties advised the Court at the outset of the hearing that a proposed agreement was reached by which the defendant would admit to Violation Numbers 1. 2 and 3.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. §3583:

1. The defendant was advised that on June 17, 2024, that this matter had been referred by the District Judge and that the District Judge has final authority whether to accept, reject, or modify the magistrate judge’s recommendation.

2. After being placed under oath, Defendant advised that he consented to the proposed agreement, had sufficient opportunity to consult with counsel, and was satisfied with his representation. Defendant admitted Violations 1, 2 and 3.

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

VIOLATION
NUMBER NATURE OF NONCOMPLIANCE

1. "You shall not commit another federal, state, or local crime."
On June 6, 2024, Mr. Kelly was charged in Greene County, Indiana, under cause number 28D01-2406-CM-000179 for Operating a Motor Vehicle with Intoxicated Endangering a Person, a misdemeanor, and Operating a Vehicle with an Alcohol Concentration Equivalent to at least .08 but less than .15, a misdemeanor.
2. "You shall not commit another federal, state, or local crime."
As previously reported, on October 11, 2024, Mr. Kelly was charged in Clay County, Indiana, for Operating a Vehicle with Alcohol Concentration Equivalent to .15 or More. These charges are still pending.
3. "You shall not use or possess alcohol."
In the allegation noted above, On June 11, 2024, Mr. Kelly is alleged to have driven a motor vehicle with a blood alcohol level above .08. His no alcohol condition was added on October 13, 2023, after the previous arrest for operating a vehicle while intoxicated.
4. The parties stipulated that:
 - (a) The highest grade of violation is a Grade **C** violation.
 - (b) Defendant's criminal history category is **VI**.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is **8-14** months imprisonment.
5. The Magistrate Judge, having considered the factors in 18 U.S.C. §3553(a), and as more fully set forth on the record, finds that:
 - (a) The Defendant violated the supervised release condition as alleged in Violations 1, 2 and 3;

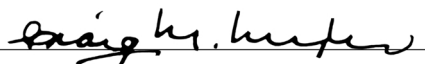
(b) Consistent with the parties' agreement, the Magistrate Judge recommends that the defendant be sentenced to continued term of supervised release with the added conditions of 60 hours of Community Service to be completed within 12 months;

(c) That the agreement of the parties is an appropriate resolution of this matter and the agreement is commended to the favorable consideration of the District Judge with the Magistrate Judge's recommendation for sentencing. While the agreement calls for sentence less than the guideline range, the defendant is serving terms of probation in state court for the underlying offenses and continued monitoring by federal probation is appropriate to provide support for alcohol abstinence.

Defendant shall remain under supervision pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the 14-day objection period to file objections for the consideration of the District Judge.

Dated: October 10, 2024


CRAIG M. McKEE, Magistrate Judge
United States District Court
Southern District of Indiana

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